THE HONOURABLE SRI JUSTICE J. CHELAMESWAR
AND
THE HONOURABLE SRI JUSTICE D. APPA RAO

W.P. NO. 13691 of 2006

DATED: 11-08-2006

Between:-

Smt. Govindamma, w/o Ganganagari Yadagiri, 42 years, occ: Household, R/o Pedapattapupalem, H/o Chennayapalem village, Kavali Mandal, Nelldore District.

…PETITIONER

And

1. The Collector and District Magistrate, Nellore,
2. The Chief Secretary, Government of Andhra Pradesh, G.A.D. Secretariat, Hyderabad,
3. The Superintendent, Central Prison, Nellore

…
RESPONDENTS

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O R D E R (per Hon'ble Sri Justice D. Appa Rao)

Sri Ganganagari Yadagiri s/o Ramaiah, was ordered to be detained by the 1st respondent, Collector & District Magistrate, Nellore, in Rc. C1 (M) 375/2006, dated 20.03.2006, under Section 3 (1), 3 (2) read with Section 2 (a) and 2 (g) of the A.P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Gundas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short 'the Act').

2. The petitioner, the wife of Ganganagari Yadagiri, challenges the validity of the order of detention as illegal, arbitrary, unconstitutional and violative of Article 22 of the Constitution of India and seeks a declaration that the order is bad in law and prays that the detenu to be released forthwith by granting a writ of Habeas Corpus.

3. The grounds of detention are based on the fact that,

30.-6.2004 at 16.00 hours at Pedapattapupalem a case was registered against him along with other followers in Crime No. 99/04 under Section 448, 427, 379 IPC on the ground that all of them have trespassed into the houses of the group of Chinnamgari Anjamma belonging to Group I and caused mischief of household articles and committed theft of some cash, gold and household articles etc. He was facing trial in the Court of Addl. Judl. Magistrate of First Class, Kavali vide C.C. No. 13 of 2005.

Later on 22-9-2005 at about 11-30 hours the detenu along with

36 others, belonging to Group-I, invaded upon the deceased Pralayakaveri Lakshmaiah and some others who are affiliated to Group-I and brutally hacked and stabbed the deceased and some others with knives, axes and spears by hurling bombs with the common object of doing away with them. Basing on which, a case in Cr. No. 111/05 under Section 147, 148, 302, 324 r/w 149 IPC Sections 3 & 5 of Explosive Substances Act was registered. A preliminary charge sheet was also filed and the case is under investigation.

Again on 9-10-2005 at 17-00 hours at Pedapattapupalem village a case is registered in Cr.No. 119/05 under Section 5 of E.S. Act on the ground that the detenu concealed 4 country made bombs in his house premises illegally to use against antagonists due to political rivalry and the said bombs were seized under a cover of police proceedings in his absence. The case is under investigation.

4. Basing on the above material, the 1st respondent- Collector and District Magistrate, Nellore, having satisfied that the activities of detenu are found to be dangerous and as such he is a 'goonda' as defined under Section 2 (g) of the Act and passed the order of detention on 20.-3-.2006.

5. The detaining authority, the Government of A.P. by G.O. Rc. No. 3523, General Administration (L&O-II) Department,
dated 04-07-2006 approved the order of detention. The said order was placed before the Advisory Board and the opinion is awaited.

6. The detention was challenged on the ground that the grounds of detention do not fall under any of the Chapters of the Indian Penal Code referred to in Section 2 (g) of the Act and they are irrelevant. If the order of detention is placed on irrelevant material in would connote that there was clear non-application of mind and the order of detention is liable to be set aside. It is illegal detention.

7. The 1st respondent, District Collector, filed counter *inter alia*

alleging that the grounds 1, 2 and 3 were taken into consideration for assessing the criminal conduct of the detenu. Therefore, the order of detention cannot be set aside.

8. The power to issue a detention order under Section 3 of the Preventive Detention Act depends entirely upon the satisfaction of the detaining authority specified in that section. The sufficiency of the grounds upon which such satisfaction purports to be based, provided they have a rational probative value and are not extraneous to the scope or purpose of the legislative provision cannot be challenged in a court of law, except on the ground of mala fides. A court of law is not even competent to enquire into the truth or otherwise of the facts which are mentioned as grounds of detention in the communication to the detenu under Section 7 of the Act.

In this regard, it is useful to consider the definition of the word 'goonda' under the Act.

> Section 2 (g) of the Act reads as follows:-
>
> "gooda" means a persons, who either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code."

Admittedly, the ground No.3 is refers to an offence under Explosive Substances Act, while the grounds 2, and 3 relate to the offences under Section 3 & 5 of Explosives Substances Act along with offences under Indian Penal Code. At the cost of repetition, we may state that ground No.3 does not attract the definition of Section 2 (g) of the Act. It is not the offences punishable under Chapter XVI or Chapter XVII or Chapter XXII or XXII of the Indian Penal Code. Undoubtedly, the detaining authority had passed the orders on irrelevant grounds.

9. By a long line of decisions, it has been settled that where one of the grounds is vague or irrelevant, the entire order must be pronounced

to be bad. The leading decision on this point is that of the Federal Court in **Keshav Talpade v. Emperor**[1] wherein it was stated:-

> "If a detaining authority gave four reasons for detaining a man, without distinguishing between them, and any two or three of the reasons are held to be bad, it can never be certain to what extent the bad reasons operated on the mind of the authority or whether the detention order would have been made at all if only one or two good reasons had been before them."

Where out of the two grounds given for detention, one was admitted to be unsubstantial or non-existent, the question examined was whether the order could be allowed to stand in such circumstances. The Supreme Court in **Shibban Lal v. State of Uttar Pradesh**[2] observed:

> "To say that the other ground, which still remains, quite sufficient to sustain the order, would be to substitute an objective judicial test for the subjective decision of the executive authority which is against the legislative policy underlying the statute. In such cases, we think, the position would be the same as if one of these two grounds was irrelevant for the purpose of the Act or was wholly illusory and this would vitiate the detention order as a whole."

The Court has consistently held that it is not possible to say if the defective grounds would have or would not have influenced decision of the detaining authority vide Dwarkadas Bhatia v. State of Jammu and Kashmir (AIR 1957 SC 164). Similar situation would arise if one of the grounds is found to be invalid.

10. We point out that the order which the 1st respondent purported to make in this case under Section 2 (g) of the Act is not one inconformity with the provisions of that Section. Since the detention order was passed under irrelevant grounds, necessarily the same has to be set aside.

11. In the result, the writ petition is allowed and the order of detention is set aside. The detenu shall be set at liberty forthwith. No

costs.

_____ J.

CHELAMESWAR, J

_____ D. APPA

RAO,J
11th August , 2006
vp

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[1] AIR 1943 FC 1
[2] AIR 1954 SC 179